

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.02-22227-CIV-MARTINEZ/KLEIN

OMAR R. OSAHAR,

Plaintiff,

v.

JOHN POTTER, Postmaster General of
The United States Postal Service,

Defendant.

2004 MAR 22 AM 10:55

DEFENDANT JOHN POTTER'S MOTION FOR COSTS
(WITH INCORPORATED MEMORANDUM AND ATTACHED BILL OF COSTS)

Pursuant to Federal Rule of Civil Procedure 54 and Southern District of Florida Local Rule 7.3, Defendant, John Potter, Postmaster General of the United States Postal Service (the "Postmaster"), respectfully requests that the Court enter an order granting the Postmaster his costs in the amount of \$3784.08, plus interest at a legal rate. On February 19, 2004, the Court entered an order granting full summary judgment in favor of the Postmaster and against Plaintiff. Based on that summary judgment ruling, the Court entered a final judgment in this case on March 5, 2004. As the prevailing party in this case, the Postmaster is entitled to an award of the taxable costs that it spent in litigating this matter. The taxable costs are set forth below and in the verified bill of costs, attached to this motion as Exhibit A.

I. LEGAL ARGUMENT

Federal Rule of Civil Procedure 54(d) provides that, absent an express provision to the contrary, costs "shall be allowed as of course to the prevailing party unless the court otherwise directs." Section 1920, 28 U.S.C., specifies those costs which the judge or clerk of court may

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tax. Included are fees of the clerk and marshal (28 U.S.C. § 1920(1)), fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case (28 U.S.C. § 1920(2)), fees and disbursements for printing and witnesses (28 U.S.C. § 1920(3)), and fees for exemplification and copies of papers necessarily obtained for use in the case (28 U.S.C. § 1920(4)).

There is no doubt that the Postmaster is the prevailing party here since this Court granted the Postmaster's motion for summary judgment and disposed of Plaintiff's case in its entirety. Accordingly, the Postmaster requests that the amounts itemized in the attached bill of costs be taxed as costs allowable pursuant to 28 U.S.C. § 1920. These include the court reporter's fees for the original and one copy of the Plaintiff's deposition transcript and copying fees for materials necessarily obtained for use in the case. Statements for the fees and costs are attached to this motion along with the bill of costs.

A. Deposition Transcript Costs

The standard for determining whether the costs of deposition transcripts are taxable is whether the depositions were "necessarily obtained for use in the case." *E.E.O.C. vs. W & O, Co.*, 213 F.3d 600,621 (11th Cir. 2000); *Tang How v. Edward J. Gerrits, Inc.*, 756 F. Supp. 1540, 1545 (S.D. Fla. 1991), *aff'd*, 961 F.2d 174 (11th Cir. 1992). In this case, the Postmaster only seeks costs for Plaintiff's deposition transcript. In order to defend the action, it was necessary for the Postmaster to obtain the transcript of Plaintiff's deposition. Plaintiff's deposition testimony was cited throughout the Postmaster's summary judgment motion. It was also cited throughout the Court's order granting full summary judgment. Plaintiff's deposition transcript

was reasonably necessary for the successful defense of this case.¹ *See Murphy v. City of Flagler Beach*, 761 F.2d 622, 631 (11th Cir. 1985). Therefore, the transcript costs sought --\$1,244.25 -- should properly be taxed as costs in this case. *See* Exhibit A (bill of costs).

B. Copying Costs

Pursuant to 28 U.S.C. §1920(4), the Postmaster is entitled to recover costs for copies of all papers “necessarily obtained for use in the case.” Section 1920(4) does not exclude any categories of documents from its scope, and has been interpreted to include copying charges attributable to discovery, pleadings, motions, memoranda, depositions, exhibits, and all other necessary papers. *See Card v. State Farm Fire and Casualty Co.*, 126 F.R.D. 658, 661 (N.D. Miss. 1989), *aff’d*, 902 F.2d 957 (5th Cir. 1990); *Friedlander v. Nims*, 583 F. Supp. 1087, 1088 (N.D. Ga. 1984); *Allen v. Freeman*, 122 F.R.D. 589, 591 (S.D. Fla. 1988); *National Bancard Corp. v. VISA, U.S.A., Inc.*, 112 F.R.D. 62, 70 (S.D. Fla. 1986). The copy service that the undersigned’s office uses pursuant to government contract charged the Postmaster about 6.4 cents per copy. This is a very reasonable copy cost. Accordingly, the Postmaster is entitled to recover the copying costs set forth in its bill of costs, which total \$2,539.83. *See* Exhibit A (bill of costs).

C. Interest

Finally, the costs that are taxed pursuant to this motion should bear interest from the date of the costs judgment. *See Georgia Ass’n of Retarded Citizens v. McDaniel*, 855 F.2d 794, 799 (11th Cir. 1988) (“When a district court taxes costs against a losing party, the award of costs must bear interest from the date of the judgment”). Therefore, the costs that are taxed in favor of the

¹ Because Plaintiff did not timely respond to Defendant’s discovery requests, and based on the request of Plaintiff’s counsel, Defendant had to reschedule Plaintiff’s deposition twice. Therefore, in order to comply with this Court’s summary judgment deadline, Defendant had to expedite transcription of the Plaintiff’s deposition.

Postmaster, as the prevailing party, should bear interest at a legal rate from the date of the costs judgment.

II. CONCLUSION

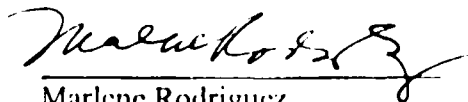
For these reasons, Defendant John Potter respectfully requests that the Court enter an order awarding taxable costs to Defendant in the total amount of \$3784.08, plus interest at the legal rate.

III. VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct, and further verify that I have fully reviewed the supporting data and that this motion is well grounded in fact and justified. Pursuant to Local Rule 7.3, I also certify that I contacted Plaintiff and Stewart Karlin, Plaintiff's trial counsel, to try to resolve the issues raised in this motion. We were unable to resolve the issues.

Respectfully submitted,

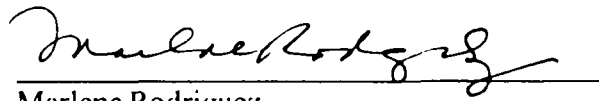
MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY



Marlene Rodriguez
Assistant U.S. Attorney
Fla. Bar. No. 0120057
99 N.E. 4th St., Suite 300
Miami, Florida 33132
Tel: (305) 961-9206
Fax: (305) 530-7139
E-mail: marlene.rodriguez@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion and attached bill of costs was mailed on March 22, 2004 to: Stewart Lee Karlin, Esq., Law Offices of Stewart Lee Karlin, 315 SE Seventh Street, Second Floor, Ft. Lauderdale, Florida 33301 and Omar Osahar, 10941 S.W. 143 Terrace, Richmond Heights, Florida 33176-6554.



Marlene Rodriguez

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.02-22227-CIV-MARTINEZ/KLEIN

OMAR R. OSAHAR,

Plaintiff,

v.

JOHN POTTER, Postmaster General of
The United States Postal Service,

Defendant.

DEFENDANT JOHN POTTER'S VERIFIED BILL OF COSTS

Depositions

Original and one copy of Plaintiff's deposition transcript	\$1,244.25
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DEPOSITION TOTAL	\$1,244.25
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Copying Costs

Copying discovery documents, including Defendant's production to Plaintiff (5/7/04)	\$31.00
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Copying discovery documents, including Defendant's production to Plaintiff (6/5/04)	\$326.85
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Copying EEO files, policy manuals, and other relevant documents (7/10/04)	\$343.61
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Copying documents produced by Plaintiff (7/18/04)	\$729.81
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Copying for use at Plaintiff's deposition (7/23/04)	\$88.46
Copying for use at Plaintiff's deposition (7/24/04)	\$114.97
Copying documents for use at Plaintiff's deposition and for use in Defendant's summary judgment motion (7/25/04)	\$905.13
TOTAL COPIES:	\$2539.83

OVERALL TOTAL

Deposition Transcripts	\$1244.25
Copying	\$2539.83
	<hr/>
	\$3784.08

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Marlene Rodriguez, make this verification in support of Defendant's motion to tax costs. Upon my and my colleagues' review of the costs records and supporting data relied upon in preparation for the motion to tax costs and verified bill of costs, I attest that the motion and bill are well grounded in fact and justified. I declare under penalty of perjury that the information set forth in the bill of costs is true and correct.



Marlene Rodriguez
Counsel for Defendant

Dated: March ²², 2004

BILLS AND INVOICES ATTACHED



Fernandez & Associates

305-374-8868

Fax: 305-374-9668

Rivergate Plaza, Suite 718
444 Brickell Ave. • Miami, FL 33131

Broward
954-382-2101

Invoice

INVOICE #	DATE
2987	07/31/2003

BILL TO	
U.S. ATTORNEY'S OFFICE 99 NE 4TH STREET, 2nd FLOOR MIAMI, FL 33132	
ATTN	Barbara Lagoa, AUSA

REPORTER		TERMS		
S. Martinez		Net 15		
DATE TAKEN	DESCRIPTION	QUANTITY	RATE	AMOUNT
07/28/2003	OMAR OSAHAR VS. JOHN POTTER AUTH NO.11009-222			
	Original and one copy of the deposition transcript of Omar Osahar	306	4.00	1,224.00
	Mini, Index, & ASCII (NO CHARGE)			
	81 Exhibits	81	0.25	20.25
Total			\$1,244.25	

Thank you for using Fernandez & Associates, Inc.
Past due invoices carry a 1.5% interest charge per month.
Tax ID # 65-0595628

2515



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MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

Invoice

DATE	INVOICE #
5/7/2003	24124

BILL TO:

8000-U.S. ATTYS OFFICE, CIVIL DIVISION
3RD FLOOR
99 NORTH EAST 4TH STREET
MIAMI, FLORIDA 33132

NUMBER	TERMS	ORDERED BY
P.O. 60324	NET 30	ALINE LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
500	IMPRESSIONS	0.064	32.00
	Cost Adjustment	-3.00%	-0.96

Aline Lacombe

01984316/95-753-Cirlet
60324
B. Lyon/AL 5/7/03

03 MAY - 7 11 37

\$31.04

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DATE	INVOICE #
6/5/2003	24420

BILL TO:

8000 U.S. ATTYS OFFICE, CIVIL DIVISION
3RD FLOOR
99 NORTH EAST 4TH STREET
MIAMI, FLORIDA 33132

NUMBER	TERMS	ORDERED BY
P.O. 60345	NEL 30	ALINE LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
5,265	IMPRESSIONS	0.064	336.96
	Cost Adjustment	-3.00%	-10.11

Aline Lacombe
6/15/03

\$326.85

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DATE	INVOICE #
7/10/2003	24700

BILL TO:

8000 U.S. ATTORNEY'S OFFICE, CIVIL DIVISION
3RD FLOOR
99 NORTH EAST 4TH STREET
MIAMI, FLORIDA 33132

NUMBER	TERMS	ORDERED BY
P.O. 60365	NET 30	ALINE LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
5,535	IMPRESSIONS	0.064	354.24
	Cost Adjustment	-3.00%	-10.63

LEGAL IMPRINTS
150 S.E. 2ND AVE.
SUITE 200
MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

DATE: 7/10/03
BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]

TERMS: NET 30
CREDIT: 10%
DISCOUNT: 10%
CASH: 10%

7/10/03

\$343.61

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120 DAYS WILL INCUR ADDITIONAL INTEREST CHARGES OF 11.2% PER MONTH

TOTAL

PLEASE ROUTE TO YOUR ACCOUNTING DEPARTMENT

3251



150 S.E. 2ND Ave.
SUITE 200
MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

Invoice

DATE	INVOICE #
7/18/2003	24782

BILL TO:

8000-U.S. ATTYS OFFICE
SUITE 700
99 NORTH EAST 4TH STREET
MIAMI, FL 33132

NUMBER	TERMS	ORDERED BY
P.O. 60344	NET 30	HELEN LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
11,756	IMPRESSIONS	0.004	752.38
	Cost Adjustment	-3.00%	-22.57

☒ PAID
☒ FILED
☐ CANCELLED
☐ ASSN. CONF.

CASE NO. 95-753-GW-WCT
 DATE 6/10/04
 BY A. Lopez/TH 7/18/03

\$729.81

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 120 DAYS WILL INCUR ADDITIONAL INTEREST CHARGES OF 1.2% PER MONTH.

TOTAL

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SUITE 200
MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

DATE	INVOICE #
7/23/2003	24831

BILL TO:

8000-U.S. ATTY'S OFFICE
SUITE 700
99 NORTH EAST 4TH STREET
MIAMI, FL 33132

NUMBER	TERMS	ORDERED BY
P.O. 60378	NET 30	HELENE LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
1,425	IMPRESSIONS	0.064	91.20
	Cost Adjustment	-3.00%	-2.74

U/ Miller

CERTIFICATE OF RECEIPT	
I hereby certify that purchase/supplies of \$91.20 have been received and are for the account of:	
<input type="checkbox"/> PARTIAL	<input checked="" type="checkbox"/> FINAL PAYMENT FOR
<input checked="" type="checkbox"/> CASH	<input type="checkbox"/> CHECK <input type="checkbox"/> ASSET
Case No.	95-753-CIV-WCT
Auth. No.	60378
<i>B. Lopez/AL</i>	7/25/03
(Signature)	(Date)

\$88.46

TOTAL

WE NOW ACCEPT AMERICAN EXPRESS, VISA & MASTERCARD
NOTICE: ALL INVOICES OVER 90 DAYS WILL INCUR A 5% LATE CHARGE, AND OVER
120 DAYS WILL INCUR ADDITIONAL INTEREST CHARGES OF 1.2% PER MONTH

PLEASE ROUTE TO YOUR ACCOUNTING DEPARTMENT
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3315

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150 S.E. 2ND Ave.
SUITE 200
MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

DATE

INVOICE #

7/24/2003

24841

BILL TO:

8000-G.S. ATTYS OFFICE
SUITE 700
99 NORTH EAST 4TH STREET
MIAMI, FL 33132

NUMBER

TERMS

ORDERED BY

P.O. 60377

NET 30

HELENE LACOMBE

QUANTITY

DESCRIPTION

RATE

AMOUNT

1,852 IMPRESSIONS
Cost Adjustment

0.064
-3.00%

118.53
-3.56

CERTIFICATE OF RECEIPT
I hereby certify that the foregoing impressions are correct and have been received by me or my authorized representative for payment.

☐ PARTIAL ☒ FINAL PAYMENT FOR

☒ USA ☐ OCCUPY ☐ ASSET FORFEIT

Case No: 95-753-Civ-Wet.

Auth. No: 60377

B. Pappas 7/25/03
(Signature)

RECEIVED
JUL 26 PM 4:17
U.S. ATTORNEY
ADMINISTRATIVE

\$114.97

TOTAL

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3332

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150 S.E. 2ND Ave.
SUITE 200
MIAMI, FLORIDA 33131
(305) 358-3730
(954) 522-0013

DATE	INVOICE #
7/25/2003	24855

BILL TO:

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SUITE 700
99 NORTH EAST 4TH STREET
MIAMI, FL 33132

NUMBER	TERMS	ORDERED BY
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P O 60382

NET 30

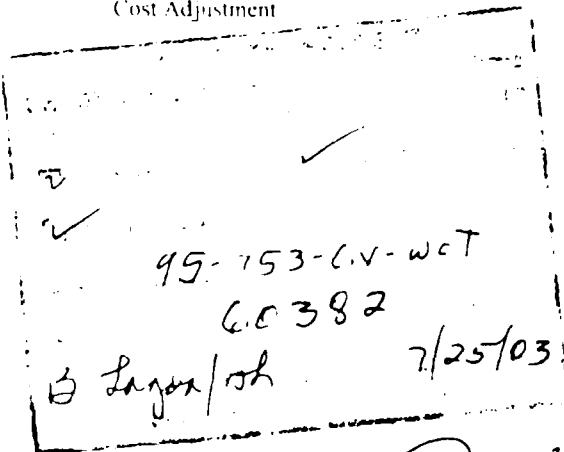
HELENE LACOMBE

QUANTITY	DESCRIPTION	RATE	AMOUNT
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14,580 IMPRESSIONS
Cost Adjustment

0.064
-3.00%

933.12
-27.99



Walley (Colley)

RECEIVED
2003 JUL 28 PM 4:30
U.S. ATTORNEY
ADMINISTRATIVE SERVICES

\$905.13

WE NOW ACCEPT AMERICAN EXPRESS, VISA & MASTERCARD
NOTICE: ALL INVOICES OVER 90 DAYS WILL INCUR A 5% LATE CHARGE AND OVER
120 DAYS WILL INCUR ADDITIONAL INTEREST CHARGES OF 11.2% PER MONTH

TOTAL



KAREN EVANS, Esq.
Certified Mediator

September 24, 2003

To: Assistant United States Attorney
Attn: Barbara Lagoa, Esq.
Suite 300
99 N.E. 4th Street
Miami, FL 33132

INVOICE

For mediation services rendered on September 22, 2003 in Omar R. Osahar v. John Potter, Postmaster General of the United States Postal Agency

2.5 hours at \$225.00/hour
Defendant's Portion - 1/2 x \$562.50

\$ 562.50 TOTAL
\$ 281.25
\$ 0.00 PAID

\$ 281.25 BALANCE

PLEASE PAY BALANCE
MAKE CHECK PAYABLE TO LITIGATION RESOLUTION, INC.

EIN # 65-0401691

✓
✓
62-22227-Lix Martinez
108629
H. Lagoa/PL 9/29/03

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